

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

SHARI LINDENBAUM, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

CVS HEALTH CORPORATION, a  
Delaware corporation,

*Defendant.*

Case No. 1:17-cv-1863-JG

Judge: James S. Gwin

**DEFENDANT CVS HEALTH CORPORATION'S REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE  
ALTERNATIVE, TO STAY THE ACTION**

Pursuant to the Federal Rules of Evidence, Defendant CVS Health Corporation ("CVS Health") requests that the Court take judicial notice of the following documents attached as Exhibits A through E to the Declaration of Julie Juergens In support of Defendant CVS Health Corporation's Request for Judicial Notice:

- **Exhibit A:** General Docket in the matter *ACA Int'l v. Federal Communications Commission*, Case No. 15-1211 (D.C. Cir.) as of November 1, 2017.
- **Exhibit B:** Joint Brief for Petitioners, *ACA Int'l v. Federal Communications Commission*, Case No. 15-1211 (D.C. Cir. Nov. 25, 2015) (No. 1585568).

- **Exhibit C:** ACA International’s Amended Petition for Review, *ACA Int’l v. Federal Communications Commission*, Case No. 15-1211 (D.C. Cir. July 13, 2015) (No. 1562251).
- **Exhibit D:** Courtroom Minutes of Oral Argument, *ACA Int’l v. Federal Communications Commission*, Case No. 15-1211 (D.C. Cir. October 19, 2016) (No. 1641668).
- **Exhibit E:** Declaratory Ruling, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, (F.C.C. July 10, 2015) (CG Docket No. 02-278).

#### **BASIS FOR REQUESTING JUDICIAL NOTICE**

Federal Rule of Evidence 201(b)(2) permits judicial notice of a fact that is “not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot be reasonably be questioned.” Courts may take judicial notice of court records in other cases as well as decisions made by administrative agencies. *Granader v. Public Bank*, 417 F.2d 75, 82 (6th Cir. 1969); *Don Lee Distributor, Inc. v. NLRB*, 145 F.3d 834, 841 n.5 (6th Cir. 1998) (“it is appropriate to take judicial notice of ‘adjudicative facts’ such as agency and judicial decisions”); *Moore v. Verizon Commc’n Inc.*, No. C 09-1823 SBA, 2010 U.S. Dist. LEXIS 94544, at \*9-11 (N.D. Cal. Sept. 10, 2010) (taking judicial notice of decisions and policy statements of the Federal Communications Commission). Exhibits A through E are copies of court records and a Federal Communications Commission order, are not subject to reasonable dispute, and are subject to judicial notice. CVS Health respectfully requests that the Court take judicial notice of Exhibits A through E.

Dated: November 1, 2017

Respectfully submitted,

/s/ Julie L. Juergens

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Counsel for Defendant  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Julie Juergens

Julie Juergens